

MESA PETROLEUM CO.

IBLA 86-1543

Decided April 5, 1989

Appeal from a decision of the Director, Minerals Management Service, assessing late payment charges on royalties due on Federal oil and gas leases. MMS-85-0038-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties--Outer Continental Shelf Lands Act:
Refunds

Because oil and gas leases are assessed royalty on an individual basis, offsetting, i.e., crediting overpayments against underpayments, is properly limited to individual lease accounts.

2. Accounts: Payments--Payments: Generally--Oil and Gas Leases:
Royalties

The Minerals Management Service is authorized to impose late payment charges or exact interest as compensation for the loss of use of money due but not paid as royalties.

APPEARANCES: Jerry E. Rothrock, Esq., Michelle L. Gilbert, Esq., Mary M. Munson, Esq., Washington, D.C., for Mesa Petroleum Co.; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Mesa Petroleum Company (Mesa) has appealed from a decision dated May 7, 1986, by the Director, Minerals Management Service (MMS), affirming an order by the Royalty Management Program Office, assessing late payment charges on royalties due on 14 offshore and onshore leases.

By memorandum dated September 30, 1983, the Inspector General of the Department of the Interior issued an audit report showing royalty underpayments by Mesa totalling \$138,379 during the audit period (January 1, 1977, through August 31, 1981).

By letter dated June 1, 1984, the Manager, MMS Tulsa Regional Compliance Office, directed Mesa to pay the additional royalties of \$138,379 within 30 days of receipt of the letter. The Manager also advised that appropriate late payment charges would be computed and billed to Mesa pursuant to 30 CFR 218.150 (formerly 30 CFR 250.49). Mesa paid \$115,648.69 by adjusting royalty payments reported on form MMS-2014, and subsequently paid the balance of \$22,730.31.

On January 24, 1985, the Manager, MMS Tulsa Regional Compliance Office, issued Mesa a determination assessing \$86,170.14 in late payment charges. The Manager's letter included a table listing late royalty payments by individual lease, corresponding late payment charges, and workpapers showing MMS' calculations. The assessment was computed on the basis of the amount past due and the number of months or days the payment was late multiplied by two percentage assessment rates, one for before the date of enactment of the Federal Oil and Gas Royalty Management Act on January 13, 1983, and another for afterwards.

Mesa appealed the assessment on February 25, 1985, and on May 7, 1985, the MMS Director issued the decision appealed herein.

[1] Mesa argues that the audit that led to the imposition of the charges indicated that Mesa overpaid royalties on some leases and underpaid on others and the overpayments should be offset against the underpayments, citing Shell Oil Co., 52 IBLA 74 (1981). Offsetting of overpayments against underpayments may only occur after audit within the royalty account of a single lease, however, not among several leases. Sun Exploration & Production Co., 106 IBLA 300 (1989).

[2] Mesa argues that MMS has no authority to impose charges for late payment of royalties due in 1978, 1980, and 1981, before the Federal Oil and Gas Royalty Management Act of 1982 was enacted in 1983. See 30 U.S.C. § 1721(a) (1982). It is equitable that the United States be compensated for the loss of the use of funds that were due it under the royalty program, and MMS is authorized to assess late payment charges. Coastal Oil & Gas Corp., 108 IBLA 62 (1989); Sonat Exploration Co., 105 IBLA 97, 120 (1988), and cases cited; Billings v. United States, 232 U.S. 261, 286-88 (1914).

Mesa has requested a hearing to "resolve any possible disputes concerning the lease balances of those leases where MMS alleges that a late royalty payment was made." Mesa did not appeal the June 1, 1984, decision determining it was liable for \$138,379 in late payments, however, and may not now challenge that determination in the context of an appeal of the charges based on those late payments. The request for hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge